

Appl. No. 09/484,121  
Amdt. Dated October 15, 2003  
Reply to Office Action of April 15, 2003

### **REMARKS/ARGUMENTS**

Claims 28-33 are canceled. New claims 34 to 41 are added.

#### **Claim Objections:**

Claim 32 is objected because of the misspelling word "bacteriocidal". Claim 32 is cancelled.

#### **Claim Rejections under 35 USC § 112:**

Claims 32 and 33 were rejected under 35 U. S.C. 112 first paragraph. Claims 32 and 33 are cancelled.

#### **Claim Rejections under 35 USC § 102:**

Examiner has rejected claims 28, 32 and 33 under 35 U.S.C. § 102(b) as being anticipated by Scott et al. Claims 28, 32 and 33 are cancelled.

The new claims 34 to 41 are directed toward a process for preventing or treating septicemia by detoxifying bacterial lipopolysaccharide, which comprises determining an effective amount of lipopolysaccharide binding protein needed to elevate the concentration of lipopolysaccharide binding protein in a patient to a sufficiently high level to suppress lipopolysaccharide-induced release of cytokine, and administering to the patient the effective amount of lipopolysaccharide binding protein to elevate the concentration of lipopolysaccharide binding protein in said patient.

Scott et al. do not disclose a process for determining, and then elevating LBP concentrations high enough to suppress, not merely to inhibit, the LPS mediated activities. Thus, Scott et al. do not anticipate the present invention as described in new claims 34-41.

Examiner has rejected claims 28 and 33 under 35 USC § 102(b) as being anticipated by Heavner et al. Claims 28 and 33 are cancelled.

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Heavner et al. disclose a method for treating septicemia using peptides to inhibit binding of LPS by LBP. The present invention is directed to using a LBP protein to bind to LPS to suppress the release of toxin by LPS. Peptides do not have the higher order three dimensional structure and binding domain as LBP proteins. Therefore, the present invention as described in claims 34-41 is not anticipated by Heavner et al.

**Claim Rejections under 35 USC § 103:**

Claims 29 to 31 were rejected under 35 USC § 103(a) as unpatentable over Scott et al. Although Scott et al. may have generally proposed that it would be desirable to have LBP variants that inhibit LPS mediated activities, Scott et al. does not show how to achieve inhibition of LPS mediated activities with LBP variants alone. Scott et al. also do not show how to suppress, not merely to inhibit, LPS mediated activities. Examiner must point to disclosure in Scott et al. which shows a reasonable expectation of success of suppressing LPS mediated activities. A prima facie case of obvious has not been established.


**Conclusion:**

Based on the foregoing amendments and remarks, favorable consideration and allowance of claims 34-41 now present in the application are respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment, to Goodwin Procter LLP Deposit Account No. 06-0923.

Respectfully submitted for Applicant,

  
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